

ARTICLE 16 - SIMPLIFIED HEARING PROCEDURES

112-16-1. Definitions. (a) "Commission" means the Kansas racing commission.

(b) "Executive director" means the executive director of the commission.

(c) "Hearing body" means the commission when it conducts hearings that are not governed by the Kansas administrative procedure act and the board of stewards and the board of racing judges when they conduct hearings pursuant to K.S.A. 74-8816. (Authorized by K.S.A. 1990 Supp. 74-8804; implementing K.S.A. 1990 Supp. 74-8804 and 74-8816 as amended by 1991 SB 375, Sec. 3; effective, T-112-7-1-91, July 1, 1991; effective Oct. 21, 1991.)

112-16-2. Report of alleged violation. (a) Any person may file a report of alleged violation in any commission office.

(b) Any person reporting an alleged violation shall fully execute the report form available in commission offices. Incomplete forms shall not be accepted by commission personnel. (Authorized by K.S.A. 1990 Supp. 74-8804; implementing K.S.A. 1990 Supp. 74-8804 and 74-8816 as amended by 1991 SB 375, Sec. 3; effective, T-112-7-1-91, July 1, 1991; effective Oct. 21, 1991.)

112-16-3. Notice of alleged violation and hearing. (a) If disposition of the allegation raised in the report may result in a fine, suspension, exclusion or expulsion from a racetrack facility, the hearing body shall provide the respondent with reasonable notice of the alleged violation and hearing.

(b) The notice of alleged violation and hearing shall include the following information:

- (1) the time and location of the hearing;
- (2) the identity of the hearing body and an address and telephone number where the respondent may contact the hearing body;
- (3) the case number and the name of the proceeding;
- (4) a statement of the legal authority and a general description of the allegation, including the time of occurrence;
- (5) a statement that a respondent who fails to attend the hearing may be subject to the entry of an order that is justified by the evidence presented at the hearing; and

(6) a statement that a respondent has the right to appear at the hearing in person or with counsel, the right to produce any evidence and witness on the respondent's behalf, the right to cross-examine any witness who may testify against the respondent and the right to examine any evidence that may be produced against the respondent. (Authorized by K.S.A. 1990 Supp. 74-8804; implementing K.S.A. 1990 Supp. 74-8804 and 74-8816 as amended by 1991 SB 375, Sec. 3; effective, T-112-7-1-91, July 1, 1991; effective Oct. 21, 1991.)

112-16-4. Waiver. Except to the extent precluded by another provision of law, a person may waive any right conferred upon that person by these racing regulations. (Authorized by K.S.A. 1990 Supp. 74-8804; implementing K.S.A. 1990 Supp. 74-8804 and 74-8816 as amended by 1991 SB 375, Sec. 3; effective, T-112-7-1-91, July 1, 1991; effective Oct. 21, 1991.)

112-16-5. Informal settlements. Nothing in these racing regulations shall preclude informal settlement of matters that may make a hearing unnecessary. (Authorized by K.S.A. 1990 Supp. 74-8804; implementing K.S.A. 1990 Supp. 74-8804 and 74-8816 as amended by 1991 SB 375, Sec. 3; effective, T-112-7-1-91, July 1, 1991; effective Oct. 21, 1991.)

112-16-6. Participation by and representation of respondents. (a) Whether or not participating in person, any respondent who is a natural person may be represented by an attorney licensed to practice law in the state of Kansas in any evidentiary hearing conducted before the Kansas racing and gaming commission or its designated presiding officer or officers in accordance with the Kansas administrative procedure act, K.S.A. 77-501, *et seq.*, or rules and regulations adopted by the commission pursuant to K.S.A. 1996 Supp. 74-8816(g) or K.S.A. 1996 Supp. 74-8836(k). The attorney shall represent the respondent at the respondent's own expense.

(b) Each for-profit or not-for-profit corporation, unincorporated association, or other respondent who is a non-natural person shall be represented by an attorney licensed to practice law in the state of Kansas in any evidentiary hearing conducted be-

fore the Kansas racing and gaming commission or its designated presiding officer or officers in accordance with the Kansas administrative procedure act, K.S.A. 77-501, *et seq.*, or rules and regulations adopted by the commission pursuant to K.S.A. 1996 Supp. 74-8816(g) or K.S.A. 1996 Supp. 74-8836(k). The attorney shall represent the respondent at the respondent's own expense. (Authorized by K.S.A. 1996 Supp. 74-8804 and K.S.A. 77-515(c); implementing K.S.A. 1996 Supp. 74-8804, 74-8813, 74-8815, 74-8816, 74-8817, 74-8818 and 74-8837; effective, T-112-7-1-91, July 1, 1991; effective Oct. 21, 1991; amended Sept. 19, 1997.)

112-16-7. Subpoenas, stewards' and racing judges' hearings. (a) Any party to a stewards' or racing judges' hearing may request that the executive director issue a commission subpoena in accordance with K.S.A. 1990 Supp. 74-8804(d).

(b) Subpoenas shall be served by a person designated by the executive director. Service shall be in person and at the expense of the requesting party. Proof of service shall be shown by affidavit.

(c) Subpoenas issued by the executive director may be enforced pursuant to the provisions of the Kansas parimutuel racing act. (Authorized by K.S.A. 1990 Supp. 74-8804; implementing K.S.A. 1990 Supp. 74-8804 and 74-8816 as amended by 1991 SB 375, Sec. 3; effective, T-112-7-1-91, July 1, 1991; effective Oct. 21, 1991.)

112-16-8. Presiding officer. (a) The chief steward or racing judge or chairman of the commission or another person designated by the hearing body may be the presiding officer.

(b) For stewards' and racing judges' hearings, if a substitute is required for a presiding officer or other member of the hearing body who is unavailable for any reason, the executive director may appoint a substitute. Any action taken by the duly appointed substitute is as effective as if taken by the unavailable member. (Authorized by K.S.A. 1990 Supp. 74-8804; implementing K.S.A. 1990 Supp. 74-8804 and 74-8816 as amended by 1991 SB 375, Sec. 3; effective, T-112-7-1-91, July 1, 1991; effective Oct. 21, 1991.)

112-16-9. Hearing procedure. (a) The presiding officer shall regulate the course of the proceedings.

(b) To the extent necessary for full disclosure of all relevant facts and issues, the presiding officer shall afford to all parties the opportunity to respond, present evidence and argument, conduct cross-examination and submit rebuttal evidence.

(c) Upon the request of the respondent, the presiding officer may conduct all or part of the hearing by telephone or other electronic means, if each participant in the hearing has an opportunity to participate in the entire proceeding while it is taking place.

(d) The presiding officer shall cause the hearing to be recorded at the commission's expense. The commission is not required to prepare a transcript at its expense. Subject to such reasonable conditions as the presiding officer may establish, any party may cause a person other than the commission to prepare a transcript of the proceedings.

(e) The hearing is open to public observation, except for the parts that the presiding officer states to be closed pursuant to a provision of law expressly authorizing closure. (Authorized by K.S.A. 1990 Supp. 74-8804; implementing K.S.A. 1990 Supp. 74-8804 and 74-8816 as amended by 1991 SB 375, Sec. 3; effective, T-112-7-1-91, July 1, 1991; effective Oct. 21, 1991.)

112-16-10. Evidence. (a) A presiding officer need not be bound by technical rules of evidence, but shall give the parties reasonable opportunity to be heard and to present evidence, and the presiding officer shall act reasonably and without partiality. The presiding officer shall give effect to the rules of privilege recognized by law. Evidence need not be excluded solely because it is hearsay.

(b) All testimony of parties and witnesses shall be made under oath or affirmation, and the presiding officer or the presiding officer's designee who is legally authorized to administer an oath or affirmation shall have the power to administer an oath or affirmation for that purpose.

(c) Documentary evidence may be received in the form of a copy or excerpt. Upon request, parties shall be given an opportunity to compare the copy with the original if available.

(d) Official notice may be taken of:

(1) any matter that could be judicially noticed in the courts of this state; and

(2) the record of other proceedings before the stewards and racing judges or the commission. (Authorized by K.S.A. 1990 Supp. 74-8804, implementing K.S.A. 1990 Supp. 74-8804 and 74-8816 as amended by 1991 SB 375, Sec. 3; effective, T-112-7-1-91, July 1, 1991; effective Oct. 21, 1991.)

112-16-11. Orders. (a) Within a reasonable time after the hearing, the hearing body shall enter a written order.

(b) An order shall include a brief statement of the findings of the hearing body and any penalty prescribed. The findings shall be based exclusively upon the evidence of record and on matters officially noticed in the hearing.

(c) For stewards' and racing judges' hearings, the order shall also include a statement that the order is subject to appeal to the commission and the available procedures and time limits for seeking an appeal. The order shall further include a statement that any suspension imposed by the order may be stayed, pending appeal.

(d) For stewards' and racing judges' hearings, the hearing body may impose any penalty authorized by law and may refer the matter to the commission with findings and recommendations for imposition of greater penalties.

(e) An order shall be effective when rendered.

(f) The presiding officer shall cause copies of the order to be served upon each party to the proceedings. (Authorized by K.S.A. 1997 Supp. 74-8804; implementing K.S.A. 1997 Supp. 74-8816; effective, T-112-7-1-91, July 1, 1991; effective Oct. 21, 1991; amended May 15, 1998.)

112-16-12. Service of order. (a) Service of an order shall be made upon the party and the party's attorney of record, if any, by delivering a copy of the order to the person to be served or by mailing a copy of the order or notice to the person at the person's last known address.

(b) Delivery means handing the order to the person or leaving the order at the person's principal place of business or residence with a person of

suitable age and discretion who works or resides therein.

(c) Service shall be presumed if the presiding officer, or a person directed to make service by the presiding officer, makes a written certificate of service.

(d) Service by mail is complete upon mailing.

(e) Whenever a party has the right or is required to do some act or take some proceedings within a prescribed period after service of an order is served by mail, three days shall be added to the prescribed period. (Authorized by K.S.A. 1990 Supp. 74-8804; implementing K.S.A. 1990 Supp. 74-8804 and 74-8816 as amended by 1991 SB 375, Sec. 3; effective, T-112-7-1-91, July 1, 1991; effective Oct. 21, 1991.)

112-16-13. Fines. Each fine ordered by the stewards and racing judges shall be due and payable in the commission office at the racetrack facility within 72 hours after service of the order imposing the fine, unless otherwise ordered by the stewards and racing judges. (Authorized by K.S.A. 1990 Supp. 74-8804; implementing K.S.A. 1990 Supp. 74-8804 and 74-8816 as amended by 1991 SB 375, Sec. 3; effective, T-112-7-1-91, July 1, 1991; effective Oct. 21, 1991.)

112-16-14. Appeal, stewards' and racing judges' hearing. (a) Any order entered by the stewards or racing judges that imposes a fine or suspension shall be subject to appeal to the commission. Such an order shall be deemed to be an initial order under the Kansas administrative procedure act and any such appeal shall be treated as a petition for administrative review under the Kansas administrative procedure act.

(b) A party who wishes to appeal a stewards' or racing judges' order shall file a notice of appeal and brief form in the stewards' or racing judges' office during regular office hours within 72 hours after personal service of the order from which the party is appealing. If an order is served by mail, the party shall have an additional 72 hours in which to file a notice of appeal and brief form. For purposes of computing the timeliness of any service or filing made by mail, the service or filing shall be deemed complete as of 12:01 a.m. on the date mailed.

(c) Each notice of appeal and brief form shall be fully executed by the appealing party upon the form available in the stewards' or racing judges' office. Each notice of appeal and brief form shall fully state the basis for appeal and identify the issues upon which the party seeks administrative review. Incomplete forms shall not be accepted by commission personnel.

(d) A notice of appeal and brief form shall constitute the appealing party's written brief under K.S.A. 1995 Supp. 77-527(e). An opposing party shall be afforded an opportunity to file a brief in response to the appealing party's brief within 72 hours following the filing of the appealing party's brief.

(e) Each notice of appeal form shall include a statement that, in reviewing any stewards' or racing judges' order:

(1) broad decision-making powers may be exercised by the commission, one or more commissioners designated by the commission or a presiding officer designated by the commission; and

(2) in doing so, the order may be affirmed, reversed, remanded for further hearing, modified or any penalty may be increased by the commission, one or more commissioners designated by the commission or a presiding officer designated by the commission. A new hearing may also be conducted by the commission, or one or more commissioners designated by the commission or a presiding officer designated by the commission, and an occupation license may be suspended or revoked or a fine of \$5000 may be imposed for each violation of the racing act or regulations, or both.

(f) Any order entered by the commission, one or more commissioners designated by the commission or a presiding officer designated by the commission, on an appeal from an order entered by the stewards or racing judges, shall constitute a final order pursuant to K.S.A. 1995 Supp. 77-527(f) for purposes of reconsideration under K.S.A. 77-529 or judicial review pursuant to the Kansas act for judicial review and civil enforcement of agency action, K.S.A. 77-601, *et seq.*

(g) A respondent may be deemed to have timely filed a notice of appeal pursuant to subsection (b) if, after service of the stewards' or racing judges' order, the respondent:

(1) within the appeal time described in subsection (b) of this racing regulation, files a writing that states an intention to appeal the order and that includes substantially the same information requested in the appeal form available in the stewards' or racing judges' office; and

(2) within a period of time authorized by the chief steward or racing judge, fully executes and files in the stewards' or racing judges' office the appeal form available in that office. (Authorized by K.S.A. 1995 Supp. 74-8804, as amended by L. 1996, Ch. 262, Sec. 2; implementing K.S.A. 1995 Supp. 74-8804, as amended by L. 1996, Ch. 262, Sec. 2, and 74-8816, as amended by L. 1996, Ch. 262, Sec. 6; effective, T-112-7-1-91, July 1, 1991; effective Oct. 21, 1991; amended Dec. 22, 1995; amended March 21, 1997.)